

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4208 of 1982

Date of decision: 31-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIRSINGJI BAJAJI THAKORE

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 4208 of 1982
MR GM AMIN for Petitioners
Mr. N. N. Pandya for Respondent No. 1
MR GIRISH D BHATT for Respondent No. 2
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/96

The learned counsel for respondent No.2 makes statement that petitioner No.2 has expired on 30th May, 1990. In the additional affidavit filed by respondent No.2 on 16-7-1995 this fact has also been mentioned. No steps have been taken by the other petitioners to bring on record the heirs and legal representatives of petitioner No.2 on record and as such this writ petition qua petitioner No.2 abates. Order accordingly.

2. Heard the learned counsel for the parties.

3. The petitioners were appointed as Watchmen at different primary health centres run by respondent No.2. The dates of appointment of the petitioners are shown against their respective names as follows:

Petitioner No.	Name	Date of appointment

1	Virsinghji Bajaji Thakore	1-10-1971
3	Lahubha Ganubha Chudasama	1-6-1972
4	Vahanbhai Jasmatbhai	1-4-1971
5	Bavaji Lakhaji	27-8-1977
6	Chelaji Chandaji Baraia	3-1-1973
7	Budhaji Ataji	11-7-1975

Challenge has been made by the petitioners in this special civil application to annexure-B - the notice of termination of their services - dated 27-8-1982 / 2-9-1982. The writ petition has been admitted by this court on 11-10-1982 and interim relief as prayed for in para 27(D) has been granted. All the petitioners, except petitioner No.2 who has expired, are working in pursuance of the order of this court.

4. Learned counsel for respondent No.2 contended that even those petitioners who have completed 60 years are continued in service in pursuance of the order of this court. Their services were not brought to an end though they have reached the age of superannuation as respondent No.2 was required to comply with the order of this court. I do not find any substance in the contention of the learned counsel for the respondent. Interim relief granted by this court should have been read and understood to allow the petitioners or any one of them to continue in service till they or he attained the age of superannuation. The interim order of this court could not have been construed by respondent No.2 to

mean that the court has granted order in favour of the petitioners to continue them in service beyond the age of superannuation. Respondent No.2 could have filed appropriate application seeking clarification of the stay order, which has not been done in the present case.

5. The petitioners are working on the posts of watchmen for years together and by now their total service period would be between 20 to 25 years. Even on the day on which the notice of termination of service was given to the petitioner, they had to their credit more than ten years' service except in one or two cases where in may be a little less than ten years. In the notice annexure-B I do not find any reason assigned for termination of service of the petitioners.

6. The counsel for respondent No.2 is also unable to give out any justification, much less legal and sound justification, for dispensing with the services of the petitioners after they served the respondents for a long period. The petitioners have been protected by this Court also, and as such it is not proper and desirable to ask the petitioners to quit the employment at this stage. The counsel for respondent No.2 contended that this court may make it clear that only those petitioners who have not reached the age of superannuation may be continued in service and so far as the petitioners who have reached the age of superannuation they will cease to work from today. So far as this grievance is concerned, suffice it to say that no petitioner has right to continue in service beyond the age of superannuation. But this grievance is not the subject matter of challenge in this special civil application. Age of superannuation is to be determined by respondent No.2 according to the date of birth of each petitioner recorded in the service record. If date of birth is not recorded in the service record of the petitioners, then respondent No.2 has to ascertain the same and then pass appropriate orders, after following the principles of natural justice. For this matter no direction of this court is required. Employer has right to adjudicate on these matters and take appropriate decision in accordance with law.

7. In the result this special civil application is allowed. Notice annexure-B to the petition is quashed and set aside. The petitioners are continuing in service and as such no further order is required to be passed. Rule made absolute in the aforesaid terms. No order as to costs.

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CSM